
By: **Delegate Niemann**

Introduced and read first time: February 5, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Motor Vehicle Theft - Two Prior Convictions - Mandatory Minimum Penalty**

3 FOR the purpose of imposing a certain mandatory minimum term of imprisonment
4 for a person who is convicted of certain theft offenses involving a motor vehicle
5 when the person has two prior convictions of a certain crime involving a motor
6 vehicle; imposing a certain mandatory minimum term of imprisonment for a
7 person who is convicted of motor vehicle theft when the person has two prior
8 convictions of motor vehicle theft; prohibiting the court from imposing less than
9 the mandatory minimum sentence; prohibiting the court from suspending any
10 part of the mandatory minimum sentence; and generally relating to a
11 mandatory minimum penalty for a person with two prior convictions who is
12 convicted of certain crimes involving a motor vehicle.

13 BY repealing and reenacting, with amendments,
14 Article - Criminal Law
15 Section 7-104 and 7-105
16 Annotated Code of Maryland
17 (2002 Volume and 2003 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Criminal Law**

21 7-104.

22 (a) A person may not willfully or knowingly obtain or exert unauthorized
23 control over property, if the person:

24 (1) intends to deprive the owner of the property;

25 (2) willfully or knowingly uses, conceals, or abandons the property in a
26 manner that deprives the owner of the property; or

27 (3) uses, conceals, or abandons the property knowing the use,
28 concealment, or abandonment probably will deprive the owner of the property.

1 (b) A person may not obtain control over property by willfully or knowingly
2 using deception, if the person:

3 (1) intends to deprive the owner of the property;

4 (2) willfully or knowingly uses, conceals, or abandons the property in a
5 manner that deprives the owner of the property; or

6 (3) uses, conceals, or abandons the property knowing the use,
7 concealment, or abandonment probably will deprive the owner of the property.

8 (c) (1) A person may not possess stolen personal property knowing that it
9 has been stolen, or believing that it probably has been stolen, if the person:

10 (i) intends to deprive the owner of the property;

11 (ii) willfully or knowingly uses, conceals, or abandons the property
12 in a manner that deprives the owner of the property; or

13 (iii) uses, conceals, or abandons the property knowing that the use,
14 concealment, or abandonment probably will deprive the owner of the property.

15 (2) In the case of a person in the business of buying or selling goods, the
16 knowledge required under this subsection may be inferred if:

17 (i) the person possesses or exerts control over property stolen from
18 more than one person on separate occasions;

19 (ii) during the year preceding the criminal possession charged, the
20 person has acquired stolen property in a separate transaction; or

21 (iii) being in the business of buying or selling property of the sort
22 possessed, the person acquired it for a consideration that the person knew was far
23 below a reasonable value.

24 (3) In a prosecution for theft by possession of stolen property under this
25 subsection, it is not a defense that:

26 (i) the person who stole the property has not been convicted,
27 apprehended, or identified;

28 (ii) the defendant stole or participated in the stealing of the
29 property; or

30 (iii) the stealing of the property did not occur in the State.

31 (4) Unless the person who criminally possesses stolen property
32 participated in the stealing, the person who criminally possesses stolen property and
33 a person who has stolen the property are not accomplices in theft for the purpose of
34 any rule of evidence requiring corroboration of the testimony of an accomplice.

1 (d) A person may not obtain control over property knowing that the property
2 was lost, mislaid, or was delivered under a mistake as to the identity of the recipient
3 or nature or amount of the property, if the person:

4 (1) knows or learns the identity of the owner or knows, is aware of, or
5 learns of a reasonable method of identifying the owner;

6 (2) fails to take reasonable measures to restore the property to the
7 owner; and

8 (3) intends to deprive the owner permanently of the use or benefit of the
9 property when the person obtains the property or at a later time.

10 (e) A person may not obtain the services of another that are available only for
11 compensation:

12 (1) by deception; or

13 (2) with knowledge that the services are provided without the consent of
14 the person providing them.

15 (f) Under this section, an offender's intention or knowledge that a promise
16 would not be performed may not be established by or inferred solely from the fact that
17 the promise was not performed.

18 (g) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,
19 A person convicted of theft of property or services with a value of \$500 or more is
20 guilty of a felony and:

21 (i) is subject to imprisonment not exceeding 15 years or a fine not
22 exceeding \$25,000 or both; and

23 (ii) shall restore the property taken to the owner or pay the owner
24 the value of the property or services.

25 (2) Except as provided in [paragraph (3)] PARAGRAPHS (3) AND (4) of
26 this subsection, a person convicted of theft of property or services with a value of less
27 than \$500, is guilty of a misdemeanor and:

28 (i) is subject to imprisonment not exceeding 18 months or a fine
29 not exceeding \$500 or both; and

30 (ii) shall restore the property taken to the owner or pay the owner
31 the value of the property or services.

32 (3) (I) NOTWITHSTANDING PARAGRAPH (4) OF THIS SUBSECTION, A
33 PERSON WHO HAS TWO PRIOR CONVICTIONS FOR A VIOLATION OF SUBSECTION (A),
34 (B), (C), OR (D) OF THIS SECTION INVOLVING A MOTOR VEHICLE AND WHO ON OR
35 AFTER OCTOBER 1, 2004, IS SUBSEQUENTLY CONVICTED OF A VIOLATION OF
36 SUBSECTION (A), (B), (C), OR (D) OF THIS SECTION INVOLVING A MOTOR VEHICLE IS

1 GUILTY OF A FELONY AND ON CONVICTION SHALL BE SENTENCED TO
2 IMPRISONMENT FOR NOT LESS THAN 5 YEARS.

3 (II) NOTWITHSTANDING § 14-102 OF THIS ARTICLE, THE COURT
4 MAY NOT IMPOSE LESS THAN THE MANDATORY MINIMUM SENTENCE OF 5 YEARS.

5 (III) THE COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY
6 MINIMUM SENTENCE OF 5 YEARS.

7 [(3)] (4) [Subject] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
8 SUBSECTION AND SUBJECT to paragraph [(4)] (5) of this subsection, a person who has
9 two or more prior convictions under this subtitle and who is convicted of theft of
10 property or services with a value of less than \$500 is guilty of a misdemeanor and:

11 (i) is subject to imprisonment not exceeding 5 years or a fine not
12 exceeding \$5,000 or both; and

13 (ii) shall restore the property taken to the owner or pay the owner
14 the value of the property or services.

15 [(4)] (5) The court may not impose the penalties under [paragraph (3)]
16 PARAGRAPH (3) OR (4) of this subsection unless the State's Attorney serves notice on
17 the defendant or the defendant's counsel before the acceptance of a plea of guilty or
18 nolo contendere or at least 15 days before trial that:

19 (i) the State will seek the penalties under [paragraph (3)]
20 PARAGRAPH (3) OR (4) of this subsection; and

21 (ii) lists the alleged prior convictions.

22 (h) (1) If a person is convicted of a violation under this section for failure to
23 pay for motor fuel after the motor fuel was dispensed into a vehicle, the court shall:

24 (i) notify the person that the person's driver's license may be
25 suspended under § 16-206.1 of the Transportation Article; and

26 (ii) notify the Motor Vehicle Administration of the violation.

27 (2) The Chief Judge of the District Court and the Administrative Office
28 of the Courts, in conjunction with the Motor Vehicle Administration, shall establish
29 uniform procedures for reporting a violation under this subsection.

30 (i) An action or prosecution for theft of property or services with a value of
31 less than \$500 shall be commenced within 2 years after the commission of the crime.
32 7-105.

33 (a) In this section, "owner" means a person who has a lawful interest in or is in
34 lawful possession of a motor vehicle by consent or chain of consent of the title owner.

1 (b) A person may not knowingly and willfully take a motor vehicle out of the
2 owner's lawful custody, control, or use without the owner's consent.

3 (c) [A] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A person
4 who violates this section:

5 (1) is guilty of the felony of taking a motor vehicle and on conviction is
6 subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both;
7 and

8 (2) shall restore the motor vehicle or, if unable to restore the motor
9 vehicle, pay to the owner the full value of the motor vehicle.

10 (D) (1) A PERSON WHO HAS TWO PRIOR CONVICTIONS FOR A VIOLATION OF
11 THIS SECTION AND WHO ON OR AFTER OCTOBER 1, 2004, IS SUBSEQUENTLY
12 CONVICTED OF A VIOLATION OF THIS SECTION IS GUILTY OF THE FELONY OF TAKING
13 A MOTOR VEHICLE AND ON CONVICTION SHALL BE SENTENCED TO IMPRISONMENT
14 FOR NOT LESS THAN 5 YEARS.

15 (2) NOTWITHSTANDING § 14-102 OF THIS ARTICLE, THE COURT MAY NOT
16 IMPOSE LESS THAN THE MANDATORY MINIMUM SENTENCE OF 5 YEARS.

17 (3) THE COURT MAY NOT SUSPEND ANY PART OF THE MANDATORY
18 MINIMUM SENTENCE OF 5 YEARS.

19 [(d)] (E) (1) This section does not preclude prosecution for theft of a motor
20 vehicle under § 7-104 of this part.

21 (2) If a person is convicted under § 7-104 of this part and this section for
22 the same act or transaction, the conviction under this section shall merge for
23 sentencing purposes into the conviction under § 7-104 of this part.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2004.